IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8233 with 8234 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RADHIKA TEXTILES

Versus

AREA MANAGER

Appearance:

MR BM MANGUKIYA for Petitioner

MR JC SHETH for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/09/2000

ORAL JUDGEMENT

Learned advocate Mr. Mangukia is appearing for

the petitioners. Learned advocate Mr. J.C. Sheth is appearing for the respondent railway authorities. Both these petitions were admitted by this court on 18th December, 1990. Since the facts involved in both of these petitions are identical in nature, both of these petitions are disposed of by this common judgment.

In both these petitions, the petitioners have challenged the legality, validity and propriety of the action of the respondents in not granting weighment of the contents of the coal wagon though at no point of time the contents were weighed on the ground that the reweighment is not permissible, as same is illegal, arbitrary and capricious. The facts of special civil application no. 8233 of 1990, in short, are that the petitioner is doing the business in the name and style of M/s. Radhika Textiles, which is a proprietary concern of the petitioner engaged in the manufacturing of textile goods and articles. The petitioner has established boilers in its factory for processing textile articles and goods. Coal is required as fuel to run the boilers erected in the premises of the petitioner. The petitioner gets limited quota of coal because the distribution, production and transportation of the coal is being done by canalized agency of the Central Government. The production, distribution and transportation of coal is wholly under the Government control and at each stage, the actual user has to approach the Government Agency so as to enable itself to get the requisite quota.

That the petitioner has booked coal wagon bearing No. SE 59370 under Railway Receipt ("RR" for short) bearing No. B. 380925 which was prepared under Invoice No. 85 dated 6.11.1990. The coal was loaded at the loading station at Iklghra to Asarwa, Ahmedabad. That the RR was prepared for 57 MT as charged weight which mentions that carrying capacity + 2 MT. The RR bearing hand writing remarks that the weigh bridges at the booking station are out of order and the contents are not weighed. That the wagon in question was loaded on 2.11.1990. That the bill has been prepared by the Western Coal India Ltd. for 57 MT, as the Railway Authority has shown the charged weight in the Railway Receipt. The petitioner submits that the rake containing wagons loaded on or about 3.11.1990 from Iklghra Station had reached on or about 7.11.1990. The wagon booked by the petitioner was detached from the said rake and it has reached the Asarwa Railway Yard on or about 27th November, 1990. When it was notified that the booked coal wagon of the petitioner has reached the railway

yard, the officers of the petitioner and the agent inspected the coal wagon and it was found that it contained 40% (approximately) less quantity and, therefore, by letter dated 27.11.1990, the petitioner has made request before the second respondent to weigh the goods in question which request was not entertained by the respondent authorities and, therefore, the petitioner has approached this court by way of this petition.

The petitioner has relied upon the decision of this court reported in Special Civil Application No. 1664 of 1989 wherein identical questions have been involved. In the said petition, wagon loaded of coal meant for the petitioner was sent from Station Parasia which was not weighed when the wagon was loaded because the weigh bridge at that station was out of order. The petitioner, therefore, wanted that before the coal is delivered to them, the wagon should be weighed at Ahmedabad so that the petitioner therein can know what amount of coal has been received by the petitioner. In the said decision, it was the contention of the respondents that the rules do not permit reweighment of certain articles. It was observed in the said decision that the wagon was not weighed initially when it was sent from station Parasia and it is to be weighed for the first time. The Court further observed that unless that is done, it will not be possible for the petitioner to know how much coal it has received and it may create a difficulty for it in taking any action against the colliary or the railway in case what they have received is found less than what they have paid for. The petitioner has further pointed out that one petition was filed by the petitioner challenging the very same action of the railway authorities wherein one civil application no. 2132 of 1990 was filed which was allowed by this court on 19th June, 1991 by directing the authorities to weigh the wagon and to deliver the goods in question on payment. The petitioner has submitted that order was interpreted by the respondents as if the necessary charges included charges of demmurage, wharfage and penalty. Therefore, the petitioner again approached this court by filing notes for speaking to minutes. In the said notes for speaking to minutes, on 22nd June, 1991, this court clarified the earlier order dated 19th June, 1991 passed in civil application no. 2132 of 1990 that the necessary charges would not include any penalty and the delivery of the goods be effected after weighment, without insisting on payment of penalty, demurrage or wharfage charges. The order passed in the aforesaid civil application as well as the notes for speaking to minute were challenged in letters patent appeal no. 236

of 1991 before the division bench of this Court which came up for hearing before the division bench of this court on 21.10.1991 and it was directed to furnish cash security of Rs.15,000/- before the Registrar of this court and on such deposit, the respondents were directed to reweigh the consigned coal once again at the cost of the petitioner in its presence and to effect the delivery of the reweighed coal to the petitioner within 48 hours thereafter. It was further directed that the copies of the certificate of reweighment shall be furnished by the respondents to the petitioner with a clarification that this arrangement is strictly without prejudice to the rights and contentions of both the sides in the main special civil application. The amount was accordingly deposited by the petitioner before the Registry of this Court and pursuant to the order passed by the division bench of this Court, the coal in question was reweighed and the short fall certificates were issued wherein on reweighment, it was found that the coal was actually weighing 439 quintals i.e. 439 m.t. Therefore, according to the petitioner, it amounts to 24% short fall in the quantity of coal which was loaded as per the bill of M/s. Coal India Ltd. The petitioner is relying upon rule 117 (3), 1422,1426, 1743, 1744 of the Railway Rules. The petitioner has also pointed out that the petitioner is not liable to any demurrage charges or any wharfage charge to the respondent who has refused to entertain the legitimate request of the petitioner without any justification. In para 24(A) of the petition, the petitioner has prayed for directing the respondents to give first weighment of the contents of wagon in question arrived at Asarwa Railway Yard under Railway Receipt No. B 380925 which was prepared under Invoice NO. 85 dated 6.11.1990 and which was placed for taking delivery. In para 24(B) of the petition, the petitioner has further prayed for directing the respondents to issue a certificate of quantity of contents and short fall certificate, if any, of the said wagon which was prepared under Invoice No. 85 dated 6.11.1990 and for directing the respondents not to charge any demurrage or wharfage or any other charges of detention and/or detention of the wagon at Asarwa Yard.

The respondents have filed affidavit in reply to the present petition no which the petitioner has filed affidavit in rejoinder on 6th December, 1990.

In the similar set of circumstances, the petitioner in special civil application No. 8234 of 1990, namely M/s. Manjushree Screen Printers has prayed for similar relief while challenging the legality,

validity and propriety of the action of the respondents in not granting the weighment of the contents of coal of wagon though at no points the contents were weighed on the ground that the reweighment is not permissible as the same is illegal and arbitrary. In the said petition, the petitioner has booked coal wagon bearing No. 88323 under Railway Receipt NO. 380886 which was prepared under Invoice No. 85B 380886 dated 3/11/1990 which coal was loaded at the loading station at Parasia to Asarwa, Ahmedabad. That the railway receipt was prepared for 57 m.t. as charged weight which mentions that carrying capacity plus two mt. It is the case of the petitioner that the railway receipt bearing hand writing remarks that weigh bridges at loading station are out of order and the contents are not weighed. The wagon in question was loaded on 31.10.1990 and the bill has been prepared by the western coal field Ltd. which is a subsidiary company of M/s. Coal India Ltd. for 57 mt. as the railway authority has shown the charged weight in the railway receipt. The rake containing wagons loaded on or about 31.10.1990 from Parasia station had reached on or about 7.11.1990. The wagon booked by the petitioner was detached from the said rake and it has reached at Asarwa Railway Yard on or about 27.11.1990 and it was notified that the booked coal wagon of the petitioner has reached at Railway Yard, the officers of the petitioner and agent inspected the coal wagon and it was found that it contained 35 to 45 per cent less quantity and, therefore, the petitioner requested the respondents to weigh the contents of the coal. Said request was, however, not entertained by the respondents and, therefore, the petitioner has filed this petition and has prayed for such similar reliefs.

I have heard the learned advocates for both the sides. Learned advocate Mr. Mangukia appearing for the petitioner has relied upon the judgment delivered by this Court (Coram : S.K. Keshote,J.) in special civil application no. 7700 of 1989 dated 26th June, 2000, special civil application no. 7699 of 1989 dated 26th June, 2000 and special civil application no. 77001 of 1989 dated 26th June, 2000 which are involving very identical facts and circumstances. Copy of the decision in the aforesaid petitions was given to the learned advocate Mr. Sheth who is appearing for the respondents. After reading the said judgment, learned advocate Mr. J.C. Sheth has agreed that these two petitions are also involving identical facts and circumstances and has submitted that these two petitions can be disposed of in terms of the orders passed by this court in aforesaid three petitions.

I have also perused the copy of the judgment delivered by this Court in aforesaid three petitions. In a similar set of circumstances and identical facts, the respondents were directed to find out the cost of 1 m.t. on the day on which the booking of the same at starting point and, thereafter, on that basis, the respondents were directed to find out the cost of this shortage and on this amount of cost, the respondents were directed to calculate interest payable to the petitioner at the rate of 12% p.a. Therefore, in the present petitions also, such similar directions are required to be issued to the respondents. At the time when the wagon was booked, according to the railway receipt, 57 m.t. was shown as charged weight which mentions that carrying capacity plus 2 m.t. and in both the cases, shortage was found which was approximately estimated by the petitioner to the tune of 24% to 45% and, therefore, considering this aspect and also considering the reply and rejoinder thereto, these two petitions are also required to be allowed.

In the result, both these petitions are allowed. The respondents are directed to find out the cost of it on the date of the booking of the same at the starting point on the day on which the consignment was booked by the petitioner and, thereafter, on that basis, the respondents are directed to find out the cost of shortage which was found in respect of both the petitions. On this amount of cost of shortage which was found on record, the respondents are directed to calculate the interest payable to the petitioner at the rate of 12% per annum from 3.11.1990 in case of special civil application no. 8233 of 1990 and at the rate of 12% p.a. from 31.10.1990 in case of special civil application no. 8234 of 1990, till the date of actual payment of the amount. The respondents are directed to undertake such exercise and to complete the same within two months from the date of receipt of copy of this order and to pay the amount so determined to the petitioners within one month thereafter. The respondents are further directed to pay cost of these petitions to the petitioners herein which is quantified at Rs.2000/Rupees two thousand only each. Registry of this court is directed to refund the amount of Rs. 15000/- (Rs. fifteen thousand only) to the petitioners with interest accrued thereon from time to time till the date of payment which has been deposited by the petitioners herein in terms of the orders passed by the division bench of this court in letters patent appeal no. 236 of 1991, civil application no. 1705 of 1991 and 237 of 1991 with civil application no.1706 of 1991, by order dated 21st October, 1991 which amount has been

deposited on 23rd October, 1991. Rule is made absolute accordingly in both the petitions.

15.9.2000. (H.K. Rathod,J.)

Vyas